

- (1) The Appeals Board has the jurisdiction and authority to review this preliminary hearing proceeding under the provisions of K.S.A. 44-534a, because the issue relates to whether claimant has sustained an intervening injury.

(2) The Preliminary Hearing Order of the Administrative Law Judge should be affirmed. The evidence is uncontroverted that the claimant did sustain personal injury by accident arising out of and in the course of his employment with the respondent on August 19, 1993 when he was bent over performing mechanical work. After that date, claimant experienced progressive pain in his low back. Because he had not recovered, in February 1994 claimant requested additional medical treatment. Claimant relates his symptomatology to the August 1993 incident and does not believe he sustained additional injury after that date. Additionally, the medical records presented do not support Midwestern Insurance Company's contention that claimant sustained a new injury after August 19, 1993. Based upon the evidence presented to date, it appears it is more probably true than not that claimant did not recover from the accident on August 19, 1993 and that his present symptoms are directly related to that incident.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge John D. Clark entered in this proceeding on August 23, 1995, should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Timothy Grillot, Parsons, Kansas
James B. Biggs, Topeka, Kansas
Ronald J. Laskowski, Topeka, Kansas
Henry Menghini, Pittsburg, Kansas
John D. Clark, Administrative Law Judge
Philip S. Harness, Director